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MT LEGISLATIVE HISTORY

Chapter 481 1981

Bill (H) 300 S _____ Original bill & hist. ✓C

H. Committee on Judiciary		S. Committee on Judiciary	
Hearing Date(s) Jan 28	✓C	Hearing Date(s) March	✓C
Jan 29	✓C	Mar 21	✓C
_____	___C	_____	___C
_____	___C	_____	___C
Date Out Jan 29	✓C	Mar 21	✓C

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

HOUSE BILL NO. 300

INTRODUCED BY HATSKO, KEEDY, MOORE, PHILLIPS, KEYSER, YARDLEY, J. O'HARA, TURNAGE

IN THE HOUSE

January 16, 1981	Introduced and referred to Committee on Judiciary.
January 29, 1981	Committee recommend bill do pass. Report adopted.
January 30, 1981	Bill printed and placed on members' desks.
January 31, 1981	Second reading, do pass.
February 2, 1981	Considered correctly engrossed.
February 3, 1981	Third reading, passed. Transmitted to Senate.

IN THE SENATE

February 4, 1981	Introduced and referred to Committee on Public Health, Welfare, and Safety.
February 13, 1981	Rereferred to Committee on Judiciary.
March 24, 1981	Committee recommend bill be concurred in as amended. Report adopted.
March 26, 1981	Second reading, concurred in.
March 28, 1981	Third reading, concurred in as amended. Ayes, 43; Noes, 3.

IN THE HOUSE

March 23, 1981	Returned from Senate with amendments.
April 3, 1981	Second reading, amendments concurred in.
April 9, 1981	Third reading, amendments concurred in. Ayes, 81; Noes, 14. Sent to enrolling.
	Reported correctly enrolled.

HOUSE BILL NO. 300

INTRODUCED BY Kaedy, Mark Phillips, Gene Thayer, Gene Donaldson, J. O'Hara Turnage

A BILL FOR AN ACT ENTITLED: "AN ACT TO ENACT THE PROVISIONS OF THE MODEL DRUG PARAPHERNALIA ACT; PROVIDING FOR A DEFINITION OF DRUG PARAPHERNALIA; PROVIDING PENALTIES FOR ITS SALE, POSSESSION, OR ADVERTISEMENT; AND PROVIDING FOR FORFEITURE; AMENDING SECTIONS 44-12-102 AND 44-12-103, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Definitions. (1) As used in [sections 1 through 7], the term "drug paraphernalia" means all equipment, products, and materials of any kind that are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a dangerous drug. It includes but is not limited to:

(a) kits used, intended for use, or designed for use in planting, propagating, cultivating, growing, or harvesting of any species of plant that is a dangerous drug or from which a dangerous drug can be derived;

(b) kits used, intended for use, or designed for use in manufacturing, compounding, converting, producing, processing, or preparing dangerous drugs;

(c) isomerization devices used, intended for use, or designed for use in increasing the potency of any species of plant that is a dangerous drug;

(d) testing equipment used, intended for use, or designed for use in identifying or in analyzing the strength, effectiveness, or purity of dangerous drugs;

(e) scales and balances used, intended for use, or designed for use in weighing or measuring dangerous drugs;

(f) dilutents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose, and lactose, used, intended for use, or designed for use in cutting dangerous drugs;

(g) separation gins and sifters used, intended for use, or designed for use in removing twigs and seeds from or in otherwise cleaning or refining marijuana;

(h) blenders, bowls, containers, spoons, and mixing devices used, intended for use, or designed for use in compounding dangerous drugs;

(i) capsules, balloons, envelopes, and other containers used, intended for use, or designed for use in packaging small quantities of dangerous drugs;

(j) containers and other objects used, intended for use, or designed for use in storing or concealing dangerous

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INTRODUCED BILL

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drugs;

(k) hypodermic syringes, needles, and other objects used, intended for use, or designed for use in parenterally injecting dangerous drugs into the human body;

(l) objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing marijuana, cocaine, hashish, or hashish oil into the human body, such as:

(i) metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;

(ii) water pipes;

(iii) carburetion tubes and devices;

(iv) smoking and carburetion masks;

(v) roach clips, meaning objects used to hold burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand;

(vi) miniature cocaine spoons and cocaine vials;

(vii) chamber pipes;

(viii) carburetor pipes;

(ix) electric pipes;

(x) air-driven pipes;

(xi) chillums;

(xii) bongs;

(xiii) ice pipes or chillers.

(2) Words or phrases used in [sections 1 through 7] that are not defined by this section have the meaning given to them by the definitions contained in 50-32-101 unless the usage clearly indicates a different intent.

NEW SECTION. Section 2. Determination of what constitutes paraphernalia. In determining whether an object is drug paraphernalia, a court or other authority should consider, in addition to all other logically relevant factors, the following:

(1) statements by an owner or by anyone in control of the object concerning its use;

(2) prior convictions, if any, of an owner or of anyone in control of the object, under any state or federal law relating to any controlled substance or dangerous drug;

(3) the proximity of the object, in time and space, to a direct violation of [sections 1 through 7];

(4) the proximity of the object to dangerous drugs;

(5) the existence of any residue of dangerous drugs on the object;

(6) direct or circumstantial evidence of the intent of an owner or of anyone in control of the object to deliver it to persons whom he knows, or should reasonably know, intend to use the object to facilitate a violation of [sections 3 through 6]. The innocence of an owner or of anyone in control of the object as to a direct violation of [sections

3 through 5] does not prevent a finding that the object is intended for use or designed for use as drug paraphernalia.

(7) instructions, oral or written, provided with the object concerning its use;

(8) descriptive materials accompanying the object which explain or depict its use;

(9) national and local advertising concerning its use;

(10) the manner in which the object is displayed for sale;

(11) whether the owner or anyone in control of the object is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products;

(12) direct or circumstantial evidence of the ratio of sales of the object to the total sales of the business enterprise;

(13) the existence and scope of legitimate uses for the object in the community;

(14) expert testimony concerning its use.

NEW SECTION. Section 3. Criminal possession of drug paraphernalia. It is unlawful for any person to use or to possess with intent to use drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or

otherwise introduce into the human body a dangerous drug. Any person who violates this section is guilty of a misdemeanor and upon conviction shall be imprisoned in the county jail for not more than 6 months, fined not more than $500, or both.

NEW SECTION. Section 4. Manufacture or delivery of drug paraphernalia. It is unlawful for any person to deliver, possess with intent to deliver, or manufacture with intent to deliver drug paraphernalia, knowing or under circumstances where one reasonably should know that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a dangerous drug. Any person who violates this section is guilty of a misdemeanor and upon conviction shall be imprisoned in the county jail for not more than 6 months, fined not more than $500, or both.

NEW SECTION. Section 5. Delivery of drug paraphernalia to a minor. Any person 18 years of age or over who violates [section 4] by delivering drug paraphernalia to a person under 18 years of age who is at least 3 years his junior is guilty of a misdemeanor and upon conviction shall be imprisoned in the county jail for not more than 1 year, fined not more than $1,000, or both.

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NEW SECTION. Section 6. Advertisement of drug paraphernalia. It is unlawful for any person to place in any newspaper, magazine, handbill, or other publication any advertisement, knowing or under circumstances where one reasonably should know that the purpose of the advertisement, in whole or in part, is to promote the sale of objects designed or intended for use as drug paraphernalia. Any person who violates this section is guilty of a misdemeanor and upon conviction shall be imprisoned in the county jail for not more than 6 months, fined not more than $500, or both.

NEW SECTION. Section 7. Exemptions. Practitioners and agents under their supervision acting in the course of a professional practice as defined by 50-32-101 are exempt from [sections 1 through 7].

Section 8. Section 44-12-102, MCA, is amended to read:

"44-12-102. Things subject to forfeiture. (1) The following are subject to forfeiture:

(a) all controlled substances that have been manufactured, distributed, prepared, cultivated, compounded, processed, or possessed in violation of Title 45, chapter 9;

(b) all money, raw materials, products, and equipment of any kind that are used or intended for use in manufacturing, preparing, cultivating, compounding, processing, delivering, importing, or exporting any

controlled substance in violation of Title 45, chapter 9, except items used or intended for use in connection with quantities of marijuana in amounts less than 250 grams;

(c) except as provided in subsection (2)(d), all property that is used or intended for use as a container for anything enumerated in subsection (1)(a) or (1)(b);

(d) except as provided in subsection (2), all conveyances, including aircraft, vehicles, and vessels:

(i) which are used or intended for use in unlawfully transporting or in any manner facilitating the transportation of anything enumerated in subsection (1)(a) or (1)(b) for the purpose of sale or receipt of such thing;

(ii) in which a controlled substance is unlawfully kept, deposited, or concealed; or

(iii) in which a controlled substance is unlawfully possessed by an occupant; and

(e) all books, records, and research products and materials, including formulas, microfilm, tapes, and data, that are used or intended for use in violation of Title 45, chapter 9;; and

(f) all drug paraphernalia as defined in [section 1].

(2) (a) No conveyance used by a person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the

conveyance is a consenting party or privy to a violation of Title 45, chapter 9.

(b) No conveyance is subject to forfeiture under this section because of any act or omission established by the owner of the conveyance to have been committed or omitted without his knowledge or consent.

(c) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if he neither had knowledge of nor consented to any violation of Title 45, chapter 9.

(d) No conveyance or container is subject to forfeiture under this section if it was used or intended for use in transporting less than 250 grams of marijuana."

Section 9. Section 44-12-103, MCA, is amended to read:

"44-12-103. When property may be seized. (1) A peace officer who has probable cause to make an arrest for a violation of Title 45, chapter 9, probable cause to believe that a conveyance has been used or is intended to be used to unlawfully transport a controlled substance, or probable cause to believe that a conveyance has been used to keep, deposit, or conceal a controlled substance shall seize the conveyance so used or intended to be used or any conveyance in which a controlled substance is unlawfully possessed by an occupant. He shall immediately deliver a conveyance that he seizes to the sheriff of the county in which the seizure

is made, to be held as evidence until forfeiture is declared or release ordered.

(2) All property subject to forfeiture under 44-12-102 may be seized by a peace officer under a search warrant issued by a district court having jurisdiction over the property. Seizure without a warrant may be made if:

(a) the seizure is incident to an arrest or a search under a search warrant issued for another purpose or an inspection under an administrative inspection warrant;

(b) the property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal proceeding or a forfeiture proceeding based on this chapter;

(c) the peace officer has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(d) the peace officer has probable cause to believe that the property was used or is intended to be used in violation of Title 45, chapter 9[, or in violation of [sections 1 through 7]]."

Section 10. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the

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invalid applications.

-End-

JUDICIARY COMMITTEE

47th Legislature

Bill No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
273	To permit publication of the names of juvenile offenders under certain circumstances.	1/16/81	Metcalf	1/26/81	Do Pass as Amended 1/27/81	1/27/81
284	To amend the motor vehicle insurance liability laws, etc., in cases where there is more than one insurance policy.	1/16/81	Fabrega	1/27/81	Tabled 2/17/81 Do Pass as Amended 2/19/81	2/19/81
289	To amend the definition of serious bodily injury in the criminal codes.	1/16/81	Keedy	1/28/81	Do Not Pass 1/28/81	1/28/81
294	To increase the peremptory challenges to jurors in civil actions.	1/16/81	Pistoria	1/26/81	Do Not Pass 1/26/81	1/26/81
300	To enact the provisions of the model drug paraphernalia act.	1/16/81	Matsko	1/28/81	Do Pass 1/29/81	1/29/81
301	To increase the ability of victims of criminal mischief to recover restitution from the offender.	1/16/81	Matsko	1/26/81	Do Pass as Amended 1/28/81	1/28/81

MINUTES OF THE MEETING OF THE JUDICIARY COMMITTEE
January 28, 1981

The meeting of the House Judiciary Committee was called to order at 8:00 a.m. in Room 437 of the Capitol by Chairman Kerry Keyser presiding. All committee members were present except Rep. Teague, who was excused. (Rep. Teague later was present for the executive session). Jim Lear, Legislative Council, was present.

HOUSE BILL 300 REP. MATSKO, chief sponsor, told the committee this was an act to enact the provisions of the model drug paraphernalia act. The bill is practically an enactment of the DEA drug act. All items that would be included are listed in the bill.

CAPTAIN GERALD OBRESLEY, representing Law Enforcement, noted he has been with the department for 16 years. Ten of those years he has dealt with drug investigation. OBRESLEY stated paraphernalia are instruments used by a person who uses drugs. Paraphernalia helps to facilitate the crime of taking drugs. By eliminating this we are going to somewhat eliminate drug users. Law enforcement officers educate youth about the dangers of drugs. When the students leave the class and see a head shop it seems to be a double standard of the law.

OBRESLEY showed the committee items used for taking the drugs. He stated marijuana is the only type of substance that could be used in the pipes and bongs as regular tobacco would not work. The owners of these shops are making a big profit. If these shops were prohibited to sell the paraphernalia it would still not close the shops completely since most shops sell other items such as records or clothes.

OBRESLEY stated at fairgrounds they have booths and games that sell various types of paraphernalia.

REOBERT C. JONES, Law Enforcement, is in support of this bill. JONES showed committee members various magazines and books that promote the use of drugs. Most of these can be found on bookshelves in book stores. The youth feel they identify with the drug culture by buying these items.

JOHN SCULLY, Sheriff and Police Office in Bozeman, supports this bill. The bill is well written and covers all aspects of the drug industry.

TOM HONZEL, County Attorneys, supports this bill.

JUDY GRIFFITH, CAC, supports this bill. GRIFFITH stated the public needs to give the enforcement agencies help in this. Many people feel that eliminating the legal sale of paraphernalia in stores will eliminate the drug problem. GRIFFITH stated it would not. She showed the committee different homemade paraphernalia. It is important to realize the drug problem will not be eliminated but by enactment of this bill it will help slow down the drug scene.

GRIFFITH stated she is against the sale of paraphernalia.

There were no further proponents.

TIM RECTZ feels this bill would be unconstitutional. He stated another state ruled that it was unconstitutional in a bill they had. RECTZ feels the sale to minors is wrong and an age limit should be set. Most stores have signs stating the paraphernalia is not for sale to minors. RECTZ felt it might be a good idea to have a room for adults only to look at the items in the store.

There were no further opponents.

In closing, REP. MATSKO stated there is estimated to be about 25,000 head shops in the United States today. Thirty-six million dollars is grossed annually. Most shops make up to 200-300% profit on each item sold from what the store pays. REP. MATSKO feels this is a double standard act having the drugs illegal yet the paraphernalia legal. This act is held up in 12 other states.

REP. CURTISS asked on what grounds the bill was unconstitutional in the other state. RECTZ did not know the details.

REP. SEIFERT stated most of the things passed around had U.S. patents on them. REP. MATSKO replied the enactment of this bill would eliminate manufacturing in Montana.

REP. ANDERSON mentioned some of the things listed as paraphernalia were bowls, spoons, balloons, etc. SCULLY replied the officers would take the context of how the item was used in relation to the crime.

REP. HANNAH asked about the penalty. REP. MATSKO replied sections 4, 5, and 6 all dealt with penalties.

REP. CONN asked about magazines that carry advertisements for this type of paraphernalia. REP. MATSKO replied magazines are tailored by regions to the type of advertisements.

CHAIRMAN KEYSER asked how many stores in Montana sell the items. SCULLY replied there were eight in Bozeman and three in Great Falls. The rest of the figures were not known.

There was no further discussion on House Bill 300.

HOUSE BILL 335 REP. KANDUCH, chief sponsor, gave the committee written testimony. It was noted of an amendment he proposed on page 1, line 13 striking "otherwise" and following the word "states" adding the words "a later date,". EXHIBIT 1

HOUSE [illegible]

BILL 300 Date 1/28/81

SPONSOR

NAME	RESIDENCE	REPRESENTING	SUPPORT	OPPOSE
Robert C. Jones	Great Falls	Law Enforcement		
Gerald Shumaker	" "	Law Enforcement		
John Scully	Bozeman	Sheriffs & P.O. Ass't.	X	
Tim Hough	Helena	County Attys	X	
Jessie J. Lucht	"	M.M.A.	X	
Judy Rippingale	Helena	CAC	X	
Marty Elsaesser	Helena	Mont Nurses Assoc.	X	
Carl Pettis	Helena	Law Enf. & Peace Officers	X	

(opponent Tim Reetz signed on House Bill 335 instead of this sheet by mistake).

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

HOUSE BILL 317 REP. HANNAH moved do pass. The vote was unanimous in favor of the motion.

HOUSE BILL 300 REP. CURTISS moved do pass.

REP. EUDAILY questioned how the law enforcement agencies would enforce the bill concerning the advertisements in magazines. REP. MATSKO stated it was mostly aimed at the booklets passed around. As it becomes more widespread the editors of the magazines will probably regionalize the advertisements to fit the laws of the particular states.

REP. BENNETT opposed the bill, stating household items such as paperclips, pliers, and hatpins would be considered paraphernalia. BENNETT stated if someone leaves a hatpin in your car and it has drug residue on it you could be arrested for having paraphernalia. REP. BENNETT stated he does not mean that all police officers will abuse this authority but it could happen.

REP. MATSKO replied the bill does not say anything that can be used as paraphernalia is unlawful to possess. Prior convictions for use of durgs is looked into. If a person carries a syringe it does not mean he is a drug user, he could have diabetes. The context of the way the items are used would relate to whether or not it is considered as paraphernalia.

REP. BENNETT asked what the need for this was. If you find the drug you find the paraphernalia. All that this bill is accomplishing is getting rid of the obvious paraphernalia and the drug users will use the not so obvious things, like hatpins.

REP. MATSKO stated this would break down the three million dollar business.

REP. CONN stated couldn't the stores sell paraphernalia in parts and the person could put it together themselves.

REP. CURTISS offered an amendment on page 5, line 21 following "use" inserting "deliver". REP. MATSKO opposed the amendment stating he felt it was already included. JIM LEAR agreed with REP. MATSKO that the definition was already covered under section 4. REP. CURTISS withdrew her amendment.

REP. EUDAILY was concerned with games at the fairs where an item of paraphernalia is given as a prize. REP. MATSKO stated with this bill the carnival people would not be allowed to exhibit these items for prizes.

REP. BENNETT had a brief on the Supreme Court ruling in Ohio, 6th Circuit dealing with paraphernalia. It was determined the term

paraphernalia is vague. REP. MATSKO questioned if the bill in Ohio was the same as the bill proposed in Montana.

REP. DAILY felt the committee has a job to do. If we feel this is a good bill we should pass it and not worry about it being unconstitutional. REP. DAILY stated the Supreme Court would decide that.

The motion of do pass passed with REP. BENNETT, REP. TEAGUE, REP. EUDAILY and REP. SHELDEN voting no. REP. IVERSON, REP. ANDERSON and REP. SEIFERT were absent during the vote.

The meeting recessed at 9:30 a.m.

The House Judiciary Committee reconvened at 10:30 a.m. on January 29, 1981 in the Scott Hart Auditorium to listen to testimony concerning House Joint Resolution 15. All members were present. Jim Lear, Legislative Council was present. Chairman Keyser stated each side had 45 minutes to present their views.

HOUSE JOINT RESOLUTION 15 REP. O'CONNELL, chief sponsor of the bill, stated in 1977 when she first introduced the bill she stood alone against the committee; the bill was defeated. In 1979 the bill was reintroduced and a hearing was held in the Scott Hart Auditorium. This is the third time the bill has been introduced by O'CONNELL.

O'CONNELL said she speaks from her heart when she expressed the right for the unborn millions of babies being slaughtered every year by abortion. She stated she speaks of rights and she hears of rights, the right of power, the bill of rights. All of these are secondary to the right to life. Without the right to life we don't need the others. There is a law in Montana, 64-103, that protects the rights of the unborn. O'CONNELL mentioned the rally that was held on the front steps of the Capitol which hundreds of people attended in support of pro-life. One person carried a sign that affected O'CONNELL which read "Adoption not Abortion". O'CONNELL felt there are millions of childless couples who would give their lifes for one or two of these babies.

DR. JOHN PAUL FERGUSON read from written testimony. EXHIBIT 1. A recording of a baby's heartbeat after four days after the first missed period was played for the committee. FERGUSON also showed the committee a picture of the unborn child at six weeks.

Attorney KEN PETERSON, Billings, was in support of HJR15. PETERSON stated this bill arises from a decision of the Supreme Court ruling of Roe v. Wade in 1973. The decision provided that the unborn are not included within the provisions and protections of the U.S. Constitution. The case was not a unanimous case; two judges

FORTY-SEVENTH LEGISLATIVE SESSION

COMMITTEE ON JUDICIARY

HOUSE BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CONCURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CONCURRED IN DATE
HB 300	2/14/81	3/11/81	3/21/81					3/21/81	
HB 301	2/04/81	3/04/81	3/04/81					3/04/81	
HB 315	2/05/81	3/04/81	3/04/81				3/04/81		
HB 316	2/04/81	3/06/81	3/14/81						3/14/81
HB 316	3/16/81	3/24/81	3/16/81				3/24/81		
HB 317	2/05/81	3/06/81	3/14/81						3/14/81
HB 335	2/05/81	3/04/81	3/04/81				3/04/81		
HB 379	2/05/81	3/05/81	3/05/81				3/05/81		
HB 379	3/09/81	3/14/81	3/14/81					3/14/81	
HB 396	3/13/81	3/17/81	3/17/81				3/17/81		
HB 403	2/09/81	3/06/81	3/24/81					3/24/81	
HB 405	2/09/81	3/06/81	3/09/81					3/09/81	
HB 480	2/13/81	3/19/81	3/23/81					3/23/81	
HB 485	2/20/81	3/05/81	3/05/81						3/05/81
HB 508	2/16/81	3/05/81	3/05/81				3/05/81		
HB 534	2/18/81	3/11/81	3/14/81				3/14/81		

Bills and Resolutions

Senator Anderson then asked how many claims are paid every year in Montana, and how many of these would be a problem needing the solution offered by this bill. Rep. Bennett and Mike Meloy insisted that the bill is needed.

CONSIDERATION OF HOUSE BILL 96:

TO REQUIRE THE SRS TO DRAFT RULES TO SPECIFY WHEN PUBLIC ASSISTANCE MAY BE DENIED TO A PERSON WHO HAS TRANSFERRED PROPERTY FRAUDULENTLY.

Judith Carlson, representing the SRS, presented the bill in place of Rep. Feda, who could not make the meeting. Her testimony is shown on the attached testimony sheet.

Senator Halligan said that the term "less than market value" does not appear in this bill, even though it was mentioned in her testimony; and Ms. Carlson agreed that it should be put into the bill.

Senator O'Hara asked her to bring the committee an amendment to this effect, and it is shown as attached Exhibit C.

CONSIDERATION OF HOUSE BILL 212:

TO CLARIFY PROCEDURE WHEN MENTAL COMPETENCY OF THE ACCUSED IS AT ISSUE.

Rep. Keedy, District 18, Kalispell, presented the bill, saying that it represents an attempt to clarify ambiguities in three areas of the criminal code which came out of the 1977 session.

Tom Honzel supported the bill on behalf of the County Attorneys Association, and said that he felt that the changes would have much practical value.

Senator Mazurek asked how this bill would mesh with HB 403, and was told by Rep. Keedy that there was no conflict with, and little relation to, that bill.

CONSIDERATION OF HOUSE BILL 300:

TO ENACT THE PROVISIONS OF THE MODEL DRUG PARAPHERNALIA ACT.

Rep. Matsko presented the bill, saying that while it is currently illegal to use dangerous drugs in Montana, the selling and advertising of equipment necessary to the use of the drugs is commonly done. He showed the committee a

magazine called HIGH TIMES, which he described as a magazine printed to promote the drug trade. He said that to outlaw the act, while allowing the same act to be promoted in this fashion, is incomprehensible.

Captain Obresley, of the Cascade Sheriff's Dept. in Great Falls, testified in support of the bill, pointing out the conflict in outlawing the act but allowing that act to be promoted. He demonstrated various objects of drug paraphernalia and said that the mark up on these items runs from one hundred to three hundred percent. He said that many booths at the state fairs offer drug paraphernalia as prizes, and that this law would hopefully eliminate this.

Karen Strickler, speaking for the American Academy of Pediatrics, supported the bill, and presented the letter attached to her testimony sheet.

Gloye Brown, mother of a former drug addict, testified in support of the bill, saying that her daughter started buying drug paraphernalia at the age of fifteen, and now feels that part of the reason she did so was because drugs were glamorized in the various "head shops".

Skip Wilcox, representing the Department of Institutions, Division of Alcohol & Drug Abuse, in supporting the bill, said that eliminating the open sale of paraphernalia would not eliminate the drug problem. He said that on page 3, lines 5 through 8, "opiates and PCP" should be included; on line 15 of page 3 a further definition of "roach clips" may be needed; and that on page 6, under "NEW SECTION", the language about an eighteen-year-old selling to someone three years his junior could be a loophole that should be closed.

Jackie Strosnider supported the bill, saying that each week she hears of additional children being damaged by drug usage, and feels that she must speak out against the situation.

Pastor Gary Jensen, representing the Seventh-day Adventist Church, strongly supported the bill and said that he hoped it would help curb durg use.

Also speaking briefly in support of the bill were Tom Honzel, representing the County Attorneys Association; John Scully, representing the Sheriffs and Peace Officers; Jerome Loendorf, representing the Montana Medical Association; Mike Murray, of the Department of Institutions, who supported it with the amendments mentioned by Mr. Wilcox; Senator Hager, from District 30, who made the point that legitimate medical supplies carried by diabetics should not be included within the reach of this bill; Ed Sheehy, Jr., who said that his insulin syringe, under this bill, would be considered drug

paraphernalia, and this portion of the bill should be amended; and Senator Steve Brown.

Mike Meloy spoke as an opponent of the bill on behalf of the Press Association because of section 6, page 7, which prohibits advertising the paraphernalia. He felt this would be an unconstitutional provision which might possibly invalidate the rest of the bill.

In closing, Rep. Matsko suggested possibly amending page 3, lines 5 through 8, by adding "or other dangerous drugs" to eliminate the need for further amending in the future; that lines 15 through 17 on page 3 were adequately expressed; that the portion designating that an eighteen-year-old seeling to a person "three years or more his junior" is designed to serve as a protection to children in the "borderline" age; and that the definition of paraphernalia is based upon the attempt to grow, sell or use the dangerous drug in violation of the Dangerous Drug Act, and would thus eliminate medical supplies necessary for a diabetic from coverage by this law. He added that solicited use of illegal objects is not protected specifically under the Constitution, and cited cases to back up his statement. Therefore, forbidding such advertising would not cause a constitutional problem with this bill. Rep. Matsko said that eleven federal district court cases have upheld the Model Drug Paraphernalia Act against challenges. He stated that we should quit allowing people to make billions of dollars a year through this illegal sale.

Senator Halligan asked if there was any indication that the use of drugs has decreased in states where this law has been approved. Rep. Matsko said that statistics are hard to come up with on how many people did not start using drugs because of passage of the law. Senator Halligan then said that in his opinion, once the sale of this paraphernalia is made illegal it will go underground and will be headquartered in a seedy part of town, where the worst kind of people hang out, with dirty, possibly contaminated products being sold, subject to absolutely no police supervision. He said at least now it is possible for police to keep an eye on the situation. Rep. Matsko replied that far less profit is involved in an underground operation, and that by passing this bill the present double standard would be eliminated.

Senator Mazurek expressed some concern relative to how diabetics would fare under this law. He said that while they would definitely not be convicted, they still might have to prove in court that their possession of medical supplies was legitimate. Rep. Matsko said that a similar situation already exists when a diabetic goes to another state where such proof is necessary in order to obtain a syringe.

ROLL CALL

JUDICIARY COMMITTEE

47th LEGISLATIVE SESSION - - 1981 Date March 11, 198

NAME	PRESENT	ABSENT	EXCUSED
~~Anderson, Mike, Chr. (R)~~	✓		
O'Hara, Jesse A. (R)	✓		
Olson, S. A. (R)	✓		
Brown, Bob (R)	✓		
Crippen, Bruce D. (R)	✓		
Tveit, Larry J. (R)	✓		
Brown, Steve (D)	✓		
Berg, Harry K. (D)	✓		
Mazurek, Joseph P. (D)	✓		
Halligan, Michael (D)	✓		

Each day attach to minutes.

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NAME: Mike Meloy DATE: 3/11/81

ADDRESS: Executive Bldg Helena

PHONE: 442 9430

REPRESENTING WHOM? MTCA on HB 93 (support) MPA on HB 70 (opposes)

APPEARING ON WHICH PROPOSAL:

DO YOU: SUPPORT? AMEND? OPPOSE?

COMMENTS:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

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NAME: Tom Hoyt DATE: 3-11-81

ADDRESS: Helena

PHONE: 443-5554

REPRESENTING WHOM? County Attorneys

APPEARING ON WHICH PROPOSAL: HB 212 - 300

DO YOU: SUPPORT? ✓ AMEND? _____ OPPOSE? _____

COMMENTS:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Gerald Obresley DATE: Mar 11, 1981

ADDRESS: 229 15th ST. Black Eagle, Mont.

PHONE: 453-6713

REPRESENTING WHOM? Cascade Co Sheriffs Dept

APPEARING ON WHICH PROPOSAL: HB 300

DO YOU: SUPPORT? YES AMEND? _____ OPPOSE? _____

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Karen Strickler DATE: 3/11/81

ADDRESS: 1500 Jerome Pl

PHONE: 442-3796

REPRESENTING WHOM? Montana Chapter American Academy of Pediatrics

APPEARING ON WHICH PROPOSAL: HB 80

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENTS: please see written testimony

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

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Helena Medical Clinic, P.S.C.

1930 9TH AVE.
HELENA, MONTANA 59601
TELEPHONE 442-9523

INTERNAL MEDICINE:
J.B. SPAULDING, M.D.
D.R. HIESTERMAN, M.D.

OBSTETRICS AND GYNECOLOGY:
J.J. DRYNAN, M.D.
J.E. NICKEL, M.D.
R.M. BROWNING, M.D.

PEDIATRICS:
E.P. GUNDERSEN, M.D.
B.C. RICHARDS, M.D.
J.H. STRICKLER, M.D.

SURGERY:
W.J. HOOPES, M.D.
K.J. WRIGHT, M.D.

DAN SMELKO
Business Manager

March 9, 1981

Chairman Anderson and Members of the Senate Judiciary Committee:

The Montana Chapter of the American Academy of Pediatrics representing physicians caring for children and adolescents in this state is in favor of House Bill 300 regarding drug paraphernalia.

On a national level, the American Academy of Pediatrics is concerned about the access to the "drug cult" and the life style represented by the use of drug paraphernalia. The easy access to such materials does not set a good example for our children, and makes control of this major health problem difficult. We were pleased when Representative Matsko introduced this bill, and we urge a do pass recommendation.

Jeffrey H. Strickler, M.D. F.A.A.P.

JHS:bjl

EX 10

NAME: Claye Kim DATE: 3-11-21

ADDRESS: 1605 19th Ave So Gr. Falls

PHONE: 406-590-6179

REPRESENTING WHOM? Self

APPEARING ON WHICH PROPOSAL: SB 272 HB 249

DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE? _____

COMMENTS: I'm a graduate student for Social Work and I am a parent and I see a need for this bill.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: DH Skip Wilcox DATE: 3-11-81

ADDRESS: 1539 11th Ave

PHONE: 449-2827

REPRESENTING WHOM? Dept of Institutions Alcohol & Drug Abuse Div.

APPEARING ON WHICH PROPOSAL: HB 300

DO YOU: SUPPORT? ✓ AMEND? ✓ OPPOSE?

COMMENTS:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: [illegible] DATE: 3-11-91

ADDRESS: [illegible]

PHONE: [illegible]

REPRESENTING WHOM? Concerned Parents / SCIS

APPEARING ON WHICH PROPOSAL: HB 500

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENTS: Why are the things making drug use available when drug use is illegal?

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

(4)

NAME: Pastor Gary Jensen DATE: 3-11-81

ADDRESS: 1067 Cheyenne Rd., Helena

PHONE: 458-5797

REPRESENTING WHOM? Seventh-day Adventist Church

APPEARING ON WHICH PROPOSAL: HB 300

DO YOU: SUPPORT? V AMEND? _____ OPPOSE? _____

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: John Smith DATE: 3/11

ADDRESS: Box 1160

PHONE: 587-1365

REPRESENTING WHOM? Sheridan Police Officers

APPEARING ON WHICH PROPOSAL: H.B. 300

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

DATE March 11, 1981

COMMITTEE ON JUDICIARY

HB 534 HB 212
HB 93 HB 300
HB 96

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check On Support	Check On Op
Carol Jonas	self- concerned parent	HB 300	X	
Karen Mikota	LWV of Montana	HB 300 HB 212		
Karen Strickler	MT. Chapter American Academy Pediatrics	HB 300	X	
Michael L. Foster	concerned citizen	HB 300	X	
Valencia Lane	Forest Dept	HB 93		
"	"	" 93		
Scott Hanson	Mont Trial Lawyers,	HB 93	X	
Mike Murray	Dept. of Inst	HB 300	X	
Helen Murray	citizen	HB 300		
Mike Keough	MSE+G	HB 93		
R LADue	Northwestern Nat'l	HB 93		

(Please leave prepared statement with Secretary)

for immunity from prosecution in exchange for the defendant's testimony". His amendments passed unanimously. Senator Mazurek moved that the bill BE CONCURRED IN AS AMENDED, and his motion passed unanimously.

DISPOSITION OF HOUSE BILL 300:

David Niss told the committee that similar legislation has been passed by many other states and upheld in federal court. Senator Brown moved that the bill be amended as discussed in previous meetings, and this motion passed unanimously. Senator O'Hara moved that the bill BE CONCURRED IN AS AMENDED, and his motion passed over Senator Halligan's opposition.

DISPOSITION OF HOUSE BILL 773:

Senator S. Brown moved to amend the bill on page 2, line 12, by striking "or" and inserting "and"; on page 2, line 10, by striking "montnly" and inserting "quarterly". His amendments passed unanimously. Senator Olson moved that the bill be not concurred in. Senator Mazurek pointed out that this bill would make sure the guidelines were being followed. A tie vote caused the motion to fail. Senator S. Brown then moved the second amendment as shown on the attached Committee Report, and his motion passed unanimously. Senator Mazurek moved the first amendment shown on the attached Committee Report, and his motion passed unanimously. Senator O'Hara moved that the bill BE CONCURRED IN AS AMENDED, and his motion passed over the objection of Senators Anderson, Olson, Berg, and Halligan.

DISPOSITION OF HOUSE BILL 678:

Senator Tveit moved that the bill BE CONCURRED IN, and his motion passed over Senator Anderson's objection.

DISPOSITION OF HOUSE BILL 612:

Senator O'Hara moved that the bill BE NOT CONCURRED IN, and his motion passed unanimously.

DISPOSITION OF HOUSE BILL 713:

Senator O'Hara moved that the bill BE CONCURRED IN, and his motion passed over the opposition of Senators Berg and Crippen.

DISPOSITION OF HOUSE BILL 698:

Senator S. Brown moved that the bill BE CONCURRED IN, and his motion passed over Senator Crippen's objection.

DISPOSITION OF HOUSE BILL 209:

Senator S. Brown moved that the bill be amended as shown on

ROLL CALL

JUDICIARY COMMITTEE

47th LEGISLATIVE SESSION - - 1981 Date March 21,

NAME	PRESENT	ABSENT	EXCUSED
~~Anderson, Mike, Chr. (R)~~	✓		
O'Hara, Jesse A. (R)	✓		
Olson, S. A. (R)	✓		
Brown, Bob (R)	✓		
Crippen, Bruce D. (R)	✓		
Tveit, Larry J. (R)	✓		
Brown, Steve (D)	✓		
Berg, Harry K. (D)	✓		
Mazurek, Joseph P. (D)	✓		
Halligan, Michael (D)	✓		

Each day attach to minutes.

SB 300

Exhibit B

Senate Judiciary Committee.

Dear Sirs,

I urge a favorable recommendation for HB 300 dealing with the banning of head shops, selling of drug paraphernalia, and how-to-smoke related equipment and growing of marijuana etc.

I feel banning sale of smoking and related material may not stop drug usage, but it will certainly make it more difficult for the really young children to begin experimenting — even adult & teenage users are "lazy" and their usage would be curtailed, if equipment wasn't so easily available.

Please vote for making head shops and related equipment unlawful.

Mrs. Don Mascott
Great Falls, Mont.

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STANDING COMMITTEE REPORT

March 21, 19 81

MR. PRESIDENT

We, your committee on JUDICIARY

having had under consideration HOUSE Bill No. 300

MATSKO (S. BROWN)

Respectfully report as follows: That HOUSE Bill No. 300,

third reading copy, be amended as follows:

1. Page 3, lines 2 through 4.
Strike: subsection (k) in its entirety
Renumber: subsequent subsections

2. Page 3, line 7.
Following: "hashish,"
Strike: "or"
Following: "hashish oil"
Insert: ", or other dangerous drug as defined by 50-32-101"

And as so amended,

~~DO PASS~~

BE CONCURRED IN

Mike Anderson Chairman.

STATE PUB. CO.
Helena, Mont.